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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JASON DAN TAYLOR On Habeas Corpus.	F036604 (Stanislaus Co. Super. Ct. No. 70050) **MODIFICATION OF OPINION AND DENIAL OF REHEARING [NO CHANGE IN JUDGMENT]**

It is ordered that the opinion filed herein on May 4, 2001, and reported in the Official Reports (_____ Cal.App.4th ____) be modified as follows:

The two full paragraphs on page 10 of the slip opinion, including footnote 5, and the first full paragraph on page 11 of the slip opinion are deleted and the following substituted therefor:

> Here, Taylor's prior serious felony convictions were for first degree burglaries, which under the 1991 burglary statute included burglaries of an inhabited "dwelling house," "vessel," or "trailer coach." At the time of Taylor's trial in 1997, the statutory definition of a serious felony included burglary of an inhabited dwelling house or trailer coach or inhabited portion of any other building, but not burglary of a "vessel." A comparison of the language of the statutes alone would result in finding that a judgment for first degree burglary in 1991 could have been based on burglary of a vessel, yet burglary of a vessel was not specifically included as a serious felony in section 1192.7 at the time of Taylor's trial. Because of this difference it would

appear that the trial court would have to look beyond the "bare fact" of the conviction to determine if Taylor's first degree burglary convictions fell within the definition of a serious felony. But the California Supreme Court in *People v. Cruz* (1996) 13 Cal.4th 764 held that the phrase 'inhabited dwelling house' as used in section 1192.7 is a broad term and was meant to encompass an inhabited vessel. *(Id.* at pp.776-777.) Thus, although Taylor's first degree burglary convictions are not on their face congruent with the statutory language defining serious felonies, when combined with the case law, the bare fact of the first degree burglary convictions here establish that they are serious felonies. The determination of whether the prior convictions are serious felonies is purely legal, with no factual content whatever. Because there are no contested factual issues, the *Epps* decision applying *Apprendi* is precisely on point.

Footnote 6 on page 11 of the slip opinion is renumbered footnote 5.

This modification does not effect a change in the judgment.

Petitioner Taylor's petition for rehearing filed May 21, 2001, is denied.

_____

VARTABEDIAN, J.

WE CONCUR:

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ARDAIZ, P.J.

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HARRIS